

Citation: ☼ Strata Plan VR360 v. Jauhar  
2016 BCPC 0238

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Registry: North Vancouver

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA**  
(Small Claims)

BETWEEN:

**THE OWNERS, STRATA PLAN VR360**

CLAIMANT

AND:

**BHAVJIT JAUHAR**

DEFENDANT

**REASONS FOR JUDGMENT  
OF THE  
HONOURABLE JUDGE J. CHALLENGER**

Counsel for the Claimant:

G. Trotter

Counsel for the Defendant:

M.J. Van Den Hooven and V. Pigeon

Place of Hearing:

North Vancouver, B.C.

Dates of Hearing:

January 11, May 9 and 10, 2016

Date of Judgment:

July 26, 2016

[1] The Owners, Strata Plan VR 360 (the Strata) are claiming for the insurance deductible paid relating to water damage they say was caused by the toilet in suite 309 overflowing. They are also claiming for the invoice from the plumbing company who came and remedied the overflowing toilet. The defendant, Mr. Jauhar, is the owner of suite 309.

[2] The defendant alleges bad faith and bias on behalf of the Strata Council and some of its members. He also suggests the flooding was coming from underneath his toilet as a result of a backup in the sewer outlet pipe or that the flooding was from another plumbing failure in the main pipes for which the Strata is wholly responsible. Alternatively, they say the blockage found in the toilet was caused by the plumber working around the toilet.

### **Summary of Evidence**

[3] On March 12<sup>th</sup>, 2014 some residents of the Strata, including Mr. Huang who testified, noticed water flowing from the 3<sup>rd</sup> floor down into the parking garage. The source of the water was traced up to suite 309. Mr. Hoban, who is an experienced plumber, was called in. He determined that the toilet in suite 309 was backed up and overflowing. After some investigation, which included ensuring that the sewer outlet pipe was clear, he removed the toilet and took it to the garage. He cracked open the ceramic trap at the bottom and found a toilet seat "foot" lodged inside.

[4] The "foot" for clarity is a bumper which attaches to the underside of the toilet seat and rests on the top rim of the bowl. It was approximately 2 inches long by ½ inch wide and ¼ of an inch in depth. The inside of the toilet trap is not finished and is rough in

texture and as a result objects can get stuck on imperfections.

[5] The plumber explained that this object would allow water to pass but that paper or feces would catch on it, build up and cause a backup. He said he was not surprised there was nothing caught on the "foot" at the time he broke the toilet open as he had augured the toilet several times and because it appeared that at least some of what had been caught up had earlier come loose and floated out as the toilet overflowed and been soaked up in towels.

[6] When Mr. Hoban arrived at suite 309, he had a conversation with Mrs. Jauhar. She said the toilet was overflowing when she arrived home. Mr. Hoban asked Mrs. Jauhar how long the toilet had been troublesome and she said it had not been flushing properly for about a week. She said they had been using a plunger to clear the toilet.

[7] Mrs. Jauhar had used towels to attempt to stop the flow of water. Upon moving them off the floor and into the bathtub, he noted that some of the wet towels had feces on them. Contrary to the assertion of fact argued by the defendant, he did not say the water remaining in the toilet contained fecal matter.

[8] After discovering the blockage in the trap, Mr. Hoban received permission to go out and get a new toilet which he then installed. The new toilet functioned properly. The steps taken by Mr. Hoban in the bathroom in suite 309 resolved the water leakage issue entirely. It is clear that the building is an older one with ongoing plumbing challenges. However, there were no other leakage issues at or around the time in question.

[9] Mr. Hoban was employed by the company who had the contract to do the repairs and maintenance to the plumbing in the building. He had been in the building on many occasions dealing with water supply and heating pipe leaks. Mr. Hoban said he did not knock the "foot" off the toilet seat while he was working.

[10] Mr. Jauhar called Mr. Hoban at home on December 31<sup>st</sup>, 2015 in anticipation of trial. In that conversation, which Mr. Jauhar recorded, Mr. Hoban said he broke open the old toilet after installing the new toilet. In his evidence he said he was mistaken about that. He explained that he would not have gone to get a replacement until after he broke apart the old toilet and determined what had been causing the backup.

[11] It was also suggested to Mr. Hoban that he had not told either Mrs. Jauhar or Mr. Jauhar that the "foot" had been found inside the toilet drain. Mr. Hoban said he believed he did tell one or the other about that at the time he was asking for permission to go and get a replacement.

[12] The notes he made on his job description corroborated his evidence at trial. The conversation with Mrs. Jauhar and the steps Mr. Hoban took to address the flooding from the toilet backup are corroborated in an email from Mr. Hoban's employer to the property management company for the Strata dated April 1<sup>st</sup>, 2014 which relates information provided by Mr. Hoban to his employer.

[13] The Strata also called Mr. Baldassi who was one of the people dispatched to remediate the water damage. He explained the steps generally taken to minimize the damage done by flooding and described the areas where he found water. He swabbed the base of the toilet in suite 309 and that test did not show any bacteria. He explained

that steps taken to clean up could have resulted in the clean swab taken from the water around the base of the toilet.

[14] He also testified that Mrs. Jauhar said they had been having problems with the toilet backing up for at least four days. His evidence in this regard is corroborated by his own notes made at the time and an email from another employee of the restoration company to whom she said the same thing.

[15] Mr. Jauhar testified and said his wife had called him upon returning home to find water flowing out from under their toilet. He made arrangements for Mr. Hoban to attend. He said he told Mr. Hoban they had had problems with the toilet flushing slowly 10 to 15 days earlier but that plunging it had resolved the issue.

[16] He next spoke to the plumber and gave permission for a new toilet to be purchased. He said the plumber told him the toilet could not be re-installed even if it was functioning properly. Mr. Hoban testified that a toilet can be reinstalled although in some cases a new seal might be required.

[17] He said the plumber led him to believe the issue involved a blockage in the main sewer pipe outlet and never told him about finding the "foot" in the trap of the old toilet.

[18] Mrs. Jauhar testified that there was only a small amount of clean water, about two buckets in volume, coming out from under the toilet and on the floor when she got home. She used towels to mop it up and then the water stopped flowing from under the toilet. She denied that they had had any problems at all with the toilet that day or at the time her husband had said they did have a backup. She denied telling the plumber they

had been having trouble with the toilet. When cross-examined, she claimed she couldn't recall if she had told the people from the restoration company they had been having problems with the toilet backing up.

[19] They also called Mr. Brown, their neighbor, who was present at the time Mr. Hoban was working in suite 309. He has also been in conflict with the Strata over the years. He spoke about various plumbing issues the building has had over time.

[20] As to the day in question, he encountered Mr. Huang, who lives beneath suite 309 and had water escaping into his suite. They went upstairs and found Mr. Hoban and Mrs. Jauhar in suite 309. He said the plumber augured the sewer outlet pipe and said "the results were inconclusive". His evidence was inconsistent about whether he was present for a discussion about the Jauhars needing a new toilet.

#### **Assessment of the Evidence**

[21] Mr. Hoban has no interest in the matter before the court. He was an employee and no longer works for the same plumbing company. The problem he was dispatched to deal with was a simple one to resolve. I find there is no evidence he held or holds any bias toward the Jauhars. He was irritated by suggestions that he acted dishonestly or incompetently when he was contacted unexpectedly at home while watching football on New Year's Eve day and at that time mixed up one aspect of the sequence of events. I do not find this detracts from his reliability particularly given the corroboration of his evidence recorded in documents created at the time.

[22] I accept his evidence of the knowledge the Jauhars had respecting a problem with their toilet backing up for 4 to 6 days prior to overflowing and flooding. His

evidence in this respect is corroborated by the evidence of Mr. Baldassi and the email from the other employee of the restoration company.

[23] I accept Mr. Hoban's evidence that the only cause for flooding was the Jauhars' toilet backing up due to the "foot" being lodged in the drain of the toilet which in turn caused paper and feces to accumulate and block the drain which resulted in the toilet bowl overflowing. As noted above, the steps he took stopped the water leakage entirely.

[24] I also accept the evidence of Mr. Badassi as an unbiased and independent person whose only interest was in doing his job and making notes in the usual course of his duties.

[25] I do not accept the evidence of Mr. and Mrs. Jauhar as reliable on the material issues before the court. They were engaged in ongoing issues with the Strata. The Reply filed by Mr. Jauhar is evidence of significant animosity toward the Strata generally and some specific members of its Council. In both the Reply and his evidence, he made unreasonable and utterly unfounded accusations of fraud and conspiracy amongst members of the Strata Council, the plumbing company, the restoration company and the property management company.

[26] Mr. Jauhar's evidence was internally inconsistent and inconsistent with the evidence of unbiased and independent witnesses. He provided one detailed explanation for the source of the escaping water in his Reply, adopted the contents of the Reply as true and accurate and then contradicted the contents of the Reply. He pursued the theory set out in the Reply at trial as well as other speculative theories. He

also suggested that he had no idea an obstruction had been found in this toilet until the settlement conference. However, numerous letters had been sent to him from the Strata referencing this and he himself referenced this information in his Reply.

[27] Mr Jauhar's evidence was also inconsistent with the preponderance of probability. He insisted that his wife and his neighbour were present when Mr. Hoban located a blockage in the main sewer outlet pipe and then augured it out. However, a backup in the pipe which would have caused an ongoing flood of water from their toilet such as occurred in the building on the day in question, and which would have consisted of raw sewage, would have caused black water to come up into the bathtub and bathroom sink as well. None of the witnesses testified to the water being contaminated or backing up into the tub or bathroom sink.

[28] As argued by the claimants, his theory with respect to two members of the Strata Council taking advantage of the flood to make improvements to their suites was illogical as any water damage from any cause would have allowed them to defraud their insurer had they chosen to do so, without the need to pin liability upon Mr. Jauhar.

[29] The photographs of the bathroom in suite 309 make clear that Mr. Jauhar failed to comply with a direction of the Strata given to him six weeks earlier to fix the caulk around his tub. These photographs also show very poor overall maintenance in the bathroom and previous water damage such as mildew, cracked caulking and swollen and peeling base boards. He also initially declined to have a fan or dehumidifier installed by the restoration people. Overall, I infer from this body of evidence that Mr. Jauhar does not appreciate the importance of keeping a bathroom dry and properly



maintained and that his statement in evidence that he would not let his children sit on a toilet seat which was missing a "foot" or bumper is improbable.

[30] I do not accept the evidence of Mrs. Jauhar that she had no discussion or could not remember having such a discussion with Mr. Hoban or the employees of the restoration company about having had problems with the toilet backing up over several days prior to the flooding. She contradicted the evidence of her husband that there had been problems with the toilet backing some 10 days or so earlier. I also do not accept her evidence that there were no feces on the towels she used to try and soak up the contents of the toilet when she first arrived home.

[31] The suggestions of the defendant as to other possible causes of the flooding are not supported by any evidence and are purely speculative.

[32] I find as fact that the Jauhars had been having problems with their toilet backing up for at least four days prior to the flood and had not taken any steps to ensure the toilet was working properly and would not present a risk of overflowing.

[33] I also find as fact that the Strata, the property management company, the members of Strata Council, the plumbing company, Mr. Hoban, and the restoration company all acted honestly, competently and in good faith in dealing with the Jauhars' backed up toilet and the damage caused by the water which escaped from it causing damage to the two suites below.

#### **Application of Law to the Facts**

[34] The Strata does not need to establish negligence on behalf of the owner. They

need only establish responsibility: (see *Mari v. LMS 2835*, 2007 BCSC 740 at paras. 112-12.) It is trite that the toilet in the defendant's suite from which the water escaped is part of their strata lot and for which they are responsible.

[35] I find the admissions made by Mrs. Jauhar of water escaping from the toilet in suite 309, regardless of whether that came from the bowl or the seal, and the admissions of knowledge of a pre-existing problem with the toilet backing up were made as a representative of Mr. Jauhar and are binding against him: (see *Fontaine v. Canada (Attorney General)*, 2015 BCSC 1597).

[36] Pursuant to the provisions of the *Strata Property Act*, I find the defendant is responsible for the damage caused by the water which escaped from his toilet.

[37] I also find that defendant was negligent and/or was in breach of the Strata bylaws as he had knowledge about a problem with the toilet backing up and did nothing to address the potential for this to cause the toilet to overflow.

[38] The Strata is entitled to chargeback for insurance deductibles paid for claims for which an owner is responsible: see *KA 1019 v. Keiran*, 2007 BCSC 727 and *LMS v. Morrison*, 2012 BCPC 300. They are also entitled to be paid for expenses incurred with respect to matters for which an owner is responsible.

[39] I am satisfied the expenses incurred by the insurer for the Strata to repair the water damage to the two suites which were impacted, being approximately \$50,000.00, are reasonable and that the claim made by the Strata against their insurance was appropriate and reasonable. I find they are entitled to recover their \$10,000.00

deductible in full from Mr. Jauhar.

[40] I also find they are entitled to recover the invoice in the amount of \$1,008.34 for the plumber to attend and resolve the flooding issue.

[41] The claimant is also entitled to their expenses as follows:

Filing Fee - \$156.00

Service Fee - \$30.00

Property Management Company Expenses - \$1,220.00

Costs for attendance of Mr. Hoban to testify - \$840.00

[42] The total judgment in favour of the claimant is \$13,254.34 before any penalty.

[43] The claimant also asks for a penalty of 10% to be imposed against the defendant for making unfounded allegations of fraud and dishonesty against the Strata, some of its Council members, the plumbing company, the restoration company and the property management company.

[44] These issues were raised by the defendant in what can only be described as inflammatory and defamatory terms. He admitted in evidence that he had no basis other than his own suspicion for making these allegations. The Strata was put to the effort of preparing to meet these accusations at trial and much time and effort was spent at trial leading evidence to refute these utterly unfounded allegations.

[45] In *Strata Plan LMS53259 v. Sze Hand Holding Inc.*, 2015 BCCA 425 at para 11, the court said:

....self-represented litigants have no license to employ accusations of dishonesty as a feature of their rhetoric unless such accusations are firmly grounded in the evidence, are relevant to the proceedings, and are

responsibly made. By “responsibly” I mean measured, careful, and faithful to the evidence. Self-represented litigants must understand that the court is not a free fire zone where anything can be said regardless of the harm to other and their reputations...”

[46] I find it is appropriate to impose a penalty against the defendant in this matter under Rule 20 (5) in the amount of \$1,325.00 being 10% of the total judgment.

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The Honourable Judge J. Challenger  
Provincial Court of British Columbia